

ORIGINAL

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8 Attorneys for Defendant and Cross-Complainant  
9 GW SERVICES, LLC

FILED  
Superior Court of California  
County of Los Angeles

DEC 16 2014

Sherri K. *[Signature]* Executive Officer/Clerk  
By *[Signature]* Deputy  
Judi Lara

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT

11 F K B INCORPORATED, a California  
12 Corporation dba MOUNTAIN'S PEAK  
13 WATER,  
14 Plaintiff,

v.

15 GW SERVICES, LLC dba GLACIER  
16 WATER SERVICES, and DOES 1 through  
17 20 inclusive,  
18 Defendants.

19 GW SERVICES, LLC dba GLACIER  
20 WATER SERVICES,

21 Cross-Complainant,

v.

22 F K B INCORPORATED, a California  
23 Corporation dba MOUNTAIN'S PEAK  
24 WATER, and ROES 1 through 20, inclusive,

25 Cross-Defendants.

Case No.: BC531805

Assigned for all purposes to:  
Hon. Gregory W. Alarcon, Dept. 36

NOTICE OF JOINT MOTION FOR ENTRY  
OF JUDGMENT PURSUANT TO TERMS  
OF STIPULATION FOR SETTLEMENT;  
MEMORANDUM OF POINTS AND  
AUTHORITIES; DECLARATION OF  
DAVID F. BERRY

Date : January 30, 2015  
Time : 8:30 a.m.  
Dept. : 36

Complaint filed: 9/30/13  
Initial Trial Date: 12/9/14

RECEIPT #: CCH520872022  
DATE PAID: 12/16/14 09:02 AM  
PAYMENT: \$435.00  
RECEIVED:  
CHECK: \$60  
CASH: \$380  
CHANGE: \$5  
CARD: \$0

NOTICE OF JOINT MOTION FOR  
ENTRY OF JUDGMENT

CIT/CASE #: BC531805  
LEA/DEF#:

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on January 30, 2015, at 8 :30 a.m. or as soon thereafter as  
3 the matter may be heard in Department 36 of the Court in the above-captioned matter, located at  
4 111 N. Hill Street, Los Angeles, California, Plaintiff and Cross-Defendant F K B Incorporated  
5 dba as Mountain's Peak Water and Defendant and Cross-Complainant GW Services, LLC dba  
6 Glacier Water Services will move the Court to enter judgment pursuant to the terms of a  
7 stipulation for settlement.

8 The motion will be made pursuant to Code of Civil Procedure §664.6, on the grounds that  
9 the parties have stipulated to the terms of a settlement and wish for the Court to retain jurisdiction  
10 to enforce the settlement.

12 The motion will be based upon this notice, the memorandum of points and authorities  
13 attached hereto, the Declaration of David F. Berry attached hereto and exhibits attached thereto,  
14 the entire Court file in this matter, and such other, further or different oral or written matter as  
15 may be presented to the Court prior to or at the time of the hearing on this motion.

17 Dated: December 15, 2014

18 NAGLER & ASSOCIATES

19 By: David F. Berry

20 David F. Berry

21 Attorneys for Defendant and Cross-Complainant  
GW Services, LLC dba Glacier Water Services

22 Dated: December \_\_\_, 2014

24 \_\_\_\_\_ Edward A. Rose, Jr.

25 Attorneys for Plaintiff and Cross-Defendant  
26 F K B Incorporated dba Mountain's Peak Water

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TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on January 30, 2015, at 8:30 a.m. or as soon thereafter as the matter may be heard in Department 36 of the Court in the above-captioned matter, located at 111 N. Hill Street, Los Angeles, California, Plaintiff and Cross-Defendant F K B Incorporated dba as Mountain's Peak Water and Defendant and Cross-Complainant GW Services, LLC dba Glacier Water Services will move the Court to enter judgment pursuant to the terms of a stipulation for settlement.

The motion will be made pursuant to Code of Civil Procedure §664.6, on the grounds that the parties have stipulated to the terms of a settlement and wish for the Court to retain jurisdiction to enforce the settlement.

The motion will be based upon this notice, the memorandum of points and authorities attached hereto, the Declaration of David F. Berry attached hereto and exhibits attached thereto, the entire Court file in this matter, and such other, further or different oral or written matter as may be presented to the Court prior to or at the time of the hearing on this motion.

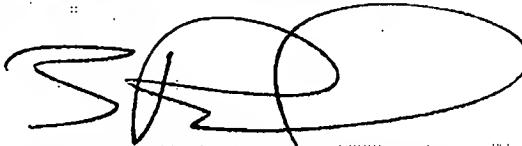
Dated: December 15, 2014

NAGLER & ASSOCIATES

By: \_\_\_\_\_

David F. Berry  
Attorneys for Defendant and Cross-Complainant  
GW Services, LLC dba Glacier Water Services

Dated: December 15, 2014

  
Edward A. Rose, Jr.  
Attorneys for Plaintiff and Cross-Defendant  
F K B Incorporated dba Mountain's Peak Water

NOTICE OF JOINT MOTION FOR  
ENTRY OF JUDGMENT

## MEMORANDUM OF POINTS AND AUTHORITIES

## I. FACTUAL BACKGROUND

The parties entered into an agreement settling this matter. (Declaration of David F. Berry (“Berry Decl.”), Exh. “1”) The settlement provided for a monetary payment, as well as a judicial reference to the Hon. Justice Richard Neal for any future disputes that might arise between the parties. (*Id.*) The Court ordered a judicial reference to Justice Neal pursuant to Code of Civil Procedure §636 on August 27, 2014. (Berry Decl., Exh. “2”) The parties bring this motion so that the Court may retain jurisdiction over the judicial reference, which is part of the settlement.

## II. LEGAL AUTHORITIES

A. CCP §664.6 Provides For A Judgment Pursuant To The Terms Of A Stipulation For Settlement

Code of Civil Procedure §664.6 provides as follows:

“If parties to pending litigation stipulate, in a writing signed by the parties outside the presence of the court or orally before the court, for settlement of the case, or part thereof, the court, upon motion, may enter judgment pursuant to the terms of the settlement. If requested by the parties, the court may retain jurisdiction over the parties to enforce the settlement until performance in full of the terms of the settlement.”

B. The Court Should Enter Judgment And Retain Jurisdiction Over The Judicial Reference

This is a classic case where the Court should retain jurisdiction to ensure compliance with the settlement terms after they are reduced to judgment. An important part of the settlement was to set up a mechanism for resolution of future disputes. Any such future disputes would be referred to Justice Neal. In order to ensure the continuing validity of the judicial reference, it is important that this Court retain jurisdiction after the settlement has been reduced to judgment.

1 Dated: December 15, 2014

Respectfully submitted,

2 NAGLER & ASSOCIATES

3 By: David F. Berry

4 David F. Berry  
5 Attorneys for Defendant and Cross-Complainant  
6 GW Services, LLC dba Glacier Water Services

7 Dated: December \_\_\_, 2014

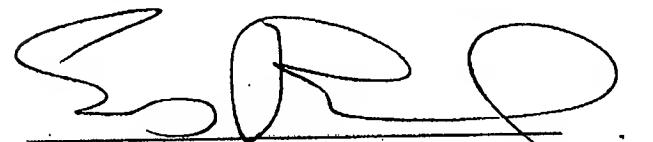
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9 Edward A. Rose, Jr.  
10 Attorneys for Plaintiff and Cross-Defendant  
11 F K B Incorporated dba Mountain's Peak Water

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Respectfully submitted,

NAGLER & ASSOCIATES

By: \_\_\_\_\_  
David F. Berry  
Attorneys for Defendant and Cross-Complainant  
GW Services, LLC dba Glacier Water Services



Edward A. Rose, Jr.  
Attorneys for Plaintiff and Cross-Defendant  
F K B Incorporated dba Mountain's Peak Water

NOTICE OF JOINT MOTION FOR  
ENTRY OF JUDGMENT

## **DECLARATION OF DAVID F. BERRY**

I, David F. Berry, state and declare as follows:

1. I am an attorney licensed to practice in California, and am with Nagler & Associates, attorneys of record for Defendant and Cross-Complainant GW Services, LLC dba Glacier Water Services in this matter.

2. I have personal knowledge as to all matters stated herein, and if called as a witness, could and would testify competently thereto.

3. After a mediation in this action on June 18, 2014, before Judge Enrique Romero of ADR, the parties to this action reached a settlement. A true copy of the settlement agreement is attached hereto as Exhibit "1;" included therein is a prior settlement agreement between the parties which was incorporated by reference.

4. The settlement involved both a monetary payment (Exhibit “1,” ¶2) and a judicial reference to Justice Richard Neal of JAMS to resolve any future disputes between the parties (Exhibit “1,” ¶4).

5. Attached hereto as Exhibit "2" is a true copy of this Court's Order dated August 27, 2014, referring this matter to Hon. Justice Richard Neal of JAMS pursuant to Code of Civil Procedure §636.

6. The parties wish to have the settlement agreement reduced to judgment pursuant to Code of Civil Procedure §664.6, so that this Court can retain jurisdiction over the judicial reference.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 18<sup>th</sup> day of December, 2014, at Los Angeles, California.

David F. Berry  
David F. Berry

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**ADDENDUM AND MODIFICATION TO SETTLEMENT**  
**AGREEMENT AND MUTUAL GENERAL RELEASE**

On April 10, 2013, GW Services, LLC dba Glacier Water Services (“Glacier Water”) and F K B Incorporated dba Mountain’s Peak Water (“Mountain’s Peak”) (together the “Parties”) entered into a Settlement Agreement and Mutual General Release (the “April 10 Agreement”). A true copy of the April 10 Agreement is attached hereto as Exhibit “A.”

Since then, additional disputes have arisen between the parties, resulting in the Complaint and Cross-Complaint in Los Angeles County Superior Court case no. BC 531805, currently pending before Hon. Gregory W. Alarcon in Department 36. Together, the Complaint and Cross-Complaint shall be referred to as “the Second Action.”

Without any admission of fault or wrongdoing or liability by any person or entity, to avoid further litigation expense and inconveniences, and to have a better mechanism for resolving future disputes between the parties related to water vending locations, the Parties have agreed to settle their existing disputes and enter into this Addendum and Modification to Settlement Agreement and Mutual General Release (“Modified Settlement Agreement”) on the following terms and conditions.

In consideration of the mutual promises, covenants, representations and warranties contained herein and for other valuable consideration, the adequacy and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Incorporation of Recitals

The foregoing recitals are an integral part of this Modified Settlement Agreement and are incorporated herein by this reference as if set forth in full.

2. Payment

Glacier Water shall pay Mountain's Peak the sum of \$15,000 by check, made payable to F K B Incorporated, sent by certified mail, to be delivered to Mountain's Peak within five days of full execution of this Agreement by all parties. This payment is neither an acknowledgment of wrongdoing nor an admission of liability, both of which are expressly denied, but rather an accommodation to improve the dispute resolution process between the Parties going forward. Additionally, Glacier Water has agreed to waive a debt of \$400 owed to it by Mountain's Peak as the result of Glacier Water prevailing in an arbitration under the April 10, 2013 Agreement.

3. No Admission of Liability

This Modified Settlement Agreement is a compromise of disputed claims. Nothing herein is intended to be, nor shall it be viewed or construed as, an

admission of liability by the Parties as to the allegations in the Complaint or Cross-Complaint, or an admission of any claim of wrongdoing by or on behalf of any person or entity.

4. Reference to Judge Zebrowski

Within five court days after the complete execution of this Agreement by all parties, the parties shall file with the Court a Stipulation for Order Appointing Referee pursuant to Code of Civil Procedure §638, appointing Judge John Zebrowski of ADR Services, Inc. as a Referee for any future disputes between the parties as set forth in sections 5(b) through (h) herein. After Judge Zebrowski has been ordered as Referee, the parties shall file the appropriate documentation to dismiss the Second Action without prejudice, but the Referee shall retain jurisdiction over such future disputes. Although the Second Action is being dismissed without prejudice, each and every claim asserted therein is being released by virtue of paragraph 7 herein. For any future disputes covered by this Modified Agreement, the Referee's ruling is final with no right to appeal. In the event Judge Zebrowski becomes unavailable, the Parties agree to choose Judge Richard Neal of JAMS, or if he is unavailable, another retired judge affiliated with ADR Services, Inc. to resolve future disputes.

5. Settlement Terms

(a) The Parties acknowledge that some of the locations listed in paragraph 5(a) of the April 10 Agreement are currently contracted with other than the specific Party listed.

The Parties agree that paragraphs 5(b), (c), (d), (e) and (f) of the April 10 Agreement shall be replaced in their entireties with paragraphs 5(b), (c), (d), (e), (f), (g), (h) and (i) below, which shall govern further interactions and disputes between the Parties:

(b) Notification Regarding Change in Vendor or Change of Owner. The Parties agree that if a location is going to change its vendor from one Party to the other Party, whether or not such change is occasioned by a change in the ownership of the location or an expiration of contract term, the Party that is to become the new vendor shall provide, by certified mail to the other Party, written notice of the change, together with a request to remove equipment signed by the location owner. The new vendor Party shall also send to the other Party a copy of its new contractual agreement with the location owner, redacted for provisions related to commissions or signing bonus. If there is a claim of change of ownership, the location owner or the new vendor Party shall also send to the other Party a copy of proof of same, including but not limited to a new business license,

documentation of the sale of the business, or any other document evidencing change of ownership.

(c) Response to Notification. Upon the other Party's receipt of a certified notice given in accordance with paragraph 5(b), the other Party shall have 10 calendar days to investigate and challenge, in writing with proper supporting documentation, the new vendor Party's claim to the location, and to provide documentation supporting such challenge. If no written challenge is provided by the other Party within the foregoing 10 calendar day period, the other Party then forfeits its rights if any, to that location. If a written challenge is timely provided, the new vendor Party shall have three calendar days to provide notice of intent to invoke the Referee process, with a hearing to be scheduled within 30 days of the notice of intent.

(d) If a dispute is submitted to the Referee, each Party shall pay 50% of the Referee's fees, and the Referee shall make his decision. Reasonable Attorney's fees and costs (including the Referee's fees) shall be awarded to the prevailing Party. If the decision is made against the Party whose machine is installed at the disputed location, the losing Party shall remove its machine as set forth in paragraph 5(e) below and shall pay to the prevailing Party \$10

per day from the date the Referee process is invoked until the date the machine is removed. If it should become an issue and is requested by the prevailing Party, the losing Party shall provide to the prevailing Party proof of payment of commission fees to the location owner for the same period.

(e) If, upon a Referee's decision, the losing Party's equipment is installed at or otherwise on the location premises, that Party shall have five days from such decision to remove its machine. Further, if a Party satisfies paragraph 5(b) and the other Party does not properly exercise its challenge right under paragraph 5(c), the other Party shall have five days from the later of (i) the end of the 10 calendar day challenge period or (ii) the scheduled expiration of the previous contract between the location and the other Party, to remove its machine. If after such five-day period the losing or non-challenging Party has not removed its machine, the losing or non-challenging Party, as applicable, thereafter shall be liable for liquidated damages at the rate of \$50 per day until the machine is removed. The prevailing Party shall provide notice by email to, respectively, Steve Stringer or Forrest Balmain, at the email address listed in paragraph 6, that the removal period has expired and

liquidated damages are accruing. If liquidated damages are not voluntarily paid, whether payable under this paragraph 5(e) or paragraph 5(h) below, they may be enforced through the Referee process.

(f) If there is a claim that one Party has disparaged, or knowingly interfered with the existing contract of, the other Party, such claims may also be submitted to the Referee process, and with the same prevailing Party provisions shall apply, provided that there must be actual loss caused by the alleged disparagement or interference, such as the loss of a location.

(g) For purposes of change in ownership giving rise to a right to change vendors, a transfer between spouses, between parent and their children, or between brothers or sisters is not considered a change in ownership. Nor is a transfer to an entity owned by the prior owner, or by any of the foregoing (spouses, parents/children, brothers/sisters).

(h) If either Party or its agents tampers with, disconnects, unplugs, removes or moves equipment belonging to the other Party, the offending Party shall pay the other Party liquidated damages of \$5,000, which can be resolved through the Referee process if not paid.

Either Party removing its own equipment shall leave utilities at the location intact and operational, and shall, if it fails to do so, pay to the other Party liquidated damages of \$500, which can be resolved through the Referee process if not voluntarily paid, for failure to do so.

(i) Each Party is free to set its prices as it chooses under applicable law.

6. Notices and Delivery

Any notice or communication required or permitted to be given by any of the Parties pursuant to this Modified Settlement Agreement (except that pursuant to paragraph 5(b), which must be by certified mail) shall be sent by email, hand-delivery, registered or certified mail or by overnight delivery service to the addresses specified below. Any notice sent in accordance with this paragraph shall be deemed received on the day of delivery if hand delivered or emailed, one business day after deposit if sent via an overnight delivery service, and the date reflected on the receipt if registered/certified mailed.

If to Glacier Water:

Glacier Water Services, Inc.  
Attn.: CFO Steve Stringer  
1385 Park Center Drive  
Vista, CA 92081-8338

steve.stringer@glacierwater.com

If to Mountain's Peak:

Mountain's Peak Water  
Attn.: Forrest Balmain  
23890 Copper Hill Drive, No. 127  
Valencia, CA 91354  
mountainspeakwater@sbcglobal.net

If there is any change of contact person, address or email, it shall be provided promptly to the other Party.

7. Mutual Release of Claims

(a) Except with respect to the obligations, representations and warranties set forth in this Modified Settlement Agreement, Mountain's Peak on its own behalf and (as applicable) on behalf of each of its heirs, executors, administrators, officers, directors, shareholders, members, agents, employees, representatives, principals, attorneys, insurers, companies, affiliates, parents, subsidiaries, partners, partnerships, joint ventures, predecessors, successors, and assigns and all persons and entities acting or claiming by, through, under or in concert with him or any of them (collectively, with Mountain's Peak, the "Mountain's Peak Relievers"), hereby irrevocably releases and forever discharges Glacier and (as applicable) each of Glacier's heirs, executors, administrators, officers, directors, shareholders, members, agents, employees, representatives, principals, attorneys, insurers, companies, affiliates, parents, subsidiaries, partners,

partnerships, joint ventures, predecessors, successors, and assigns and all persons and entities acting or claiming by, through, under or in concert with him or any of them (collectively, the "Glacier Releasees"), from any and all claims, demands, liabilities, actions, causes of action, suits, proceedings, controversies, disputes, damages, remedies, debts, obligations, costs, expenses, and attorney fees, at law or in equity, of every kind, nature, character, and description, whether known or unknown, suspected or unsuspected, anticipated or unanticipated, liquidated or unliquidated, arising from or relating to the subject matter of the Second Action, or which were or could have been (in the past, now or hereafter) asserted in (1) the Second Action; (2) the events and circumstances giving rise to the Second Action; and (3) any part of the Second Action or the prosecution or defense thereof.

(b) Except with respect to the obligations, representations and warranties set forth in this Modified Settlement Agreement, Glacier on its own behalf and (as applicable) on behalf of each of its heirs, executors, administrators, officers, directors, shareholders, members, agents, employees, representatives, principals, attorneys, insurers, companies, affiliates, parents, subsidiaries, partners, partnerships, joint ventures, predecessors, successors, and assigns and all persons and entities acting or claiming by, through, under or in concert with him or any of them (collectively, with Glacier, the "Glacier Releasors"), hereby irrevocably releases and forever discharges Mountain's Peak and (as applicable) each of

Mountain's Peak's heirs, executors, administrators, officers, directors, shareholders, members, agents, employees, representatives, principals, attorneys, insurers, companies, affiliates, parents, subsidiaries, partners, partnerships, joint ventures, predecessors, successors, and assigns and all persons and entities acting or claiming by, through, under or in concert with him or any of them (collectively, the "Mountain's Peak Releasees"), from any and all claims, demands, liabilities, actions, causes of action, suits, proceedings, controversies, disputes, damages, remedies, debts, obligations, costs, expenses, and attorney fees, at law or in equity, of every kind, nature, character, and description, whether known or unknown, suspected or unsuspected, anticipated or unanticipated, liquidated or unliquidated, arising from or relating to the subject matter of the Second Action, or which were or could have been (in the past, now or hereafter) asserted in (1) the Second Action; (2) the events and circumstances giving rise to the Second Action; and (3) any part of the Second Action or the prosecution or defense thereof.

(c) The claim set forth in subparagraphs 7(a) and 7(b) above are collectively and severally referred to herein as the "Released Claims." In entering into this mutual release of claims, each Party to this Modified Settlement Agreement acknowledges and agrees that this Paragraph 7 is intended to constitute a full mutual release of claims from the beginning of time until the date this Modified Settlement Agreement is fully executed, regardless of the existence or

effect of any unknown, unsuspected, or unanticipated claim or fact. Each Party to this Modified Settlement Agreement acknowledges and agrees that claims or facts in addition to or different from those which he or it now knows, believes, or suspects to exist might hereafter be discovered; nevertheless, it is his or its intention by entering into this Modified Settlement Agreement to fully, finally, and forever release, discharge, and settle all such claims, notwithstanding the existence or possible future discovery of any such additional or different claims or facts, which shall in no manner affect this Modified Settlement Agreement or the mutual release of claims set forth in this Paragraph 7. Consistent with that intention, each Party to this Modified Settlement Agreement expressly, voluntarily, and knowingly waives, relinquishes, and abandons each and every right, protection and benefit concerning the claims to which he or it otherwise would or might be entitled now or at any future time under Section 1542 of the California Civil Code (and all similar provisions of law), which provides:

**“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS  
WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO  
EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING  
THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST  
HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT  
WITH THE DEBTOR.”**

8. Representations, Warranties, and Indemnification

(a) Each Party to this Modified Settlement Agreement represents and warrants that he or it has not previously assigned, transferred, pledged, or hypothecated any claim covered in this Modified Settlement Agreement, and shall not do so in the future, nor knows of any person or entity not a party to this Modified Settlement Agreement having (or claiming to have) any interest in any Released Claims.

(b) The Parties each agree that he or it shall fully defend, indemnify, and hold harmless the other and (as applicable) each of his or its heirs, executors, administrators, officers, directors, shareholders, members, agents, employees, representatives, principals, attorneys, insurers, companies, affiliates, parents, subsidiaries, partners, partnerships, joint ventures, predecessors, successors, and assigns and all persons and entities acting or claiming by, through, under or in concert with him or any of them, from and against any and all claims, demands, liabilities, actions, causes of action, suits, proceedings, controversies, disputes, damages, remedies, debts, obligations, costs, expenses, and attorney fees relating to, arising out of, or resulting from the assertion by any person or entity relating to any of the claims released pursuant to this Modified Settlement Agreement which that Party assigned, transferred, pledged, or hypothecated contrary to the

representations in this Modified Settlement Agreement. It is the intention of the Parties that this indemnity not require payment by the indemnified Party as a condition precedent to recovery under this indemnity.

9. No Release of any Non-Settling Party

In the event that one or more parties to the Second Action does not sign this Modified Settlement Agreement, nothing in this Modified Settlement Agreement shall be construed as a release by Mountain's Peak or Glacier of any claims, rights or remedies to recover damages, costs, expenses or attorneys' fees from any such non-signing Party.

10. Parties to Bear Their Own Costs and Attorney Fees

Mountain's Peak, on the one hand, and Glacier, on the other hand, shall each bear all of its own costs and attorneys' fees incurred in connection with the Second Action and anything in connection with the execution of this Modified Settlement Agreement.

11. Voluntary Agreement

The Parties to this Modified Settlement Agreement acknowledge that they have read and understand each of the provisions set forth herein, that they have had the opportunity to consult with counsel of their own choice, and that this Modified Settlement Agreement is entered into freely, voluntarily, and without any duress or undue influence.

12. Other Documents

Each Party to this Modified Settlement Agreement agrees to promptly execute and deliver any and all other documents or instruments which are necessary or appropriate to effectuate any of the provisions of this Modified Settlement Agreement.

13. Successors

This Modified Settlement Agreement is binding upon and shall inure to the benefit of each of the Parties, and to each of their respective successors and heirs.

14. Integration

This instrument contains the entire agreement and understanding of each of the Parties with respect to its subject matter, and any and all other discussions, negotiations and representations relating to the subject matter hereof are merged into this Modified Settlement Agreement. No other agreement or representation, whether written, oral, or implied shall be deemed to exist or bind the Parties with respect to the subject matter of this Modified Settlement Agreement.

15. Severability

In the event that a court of competent jurisdiction enters a final judgment holding invalid any material provision of this Modified Settlement Agreement, the remainder of this Modified Settlement Agreement shall be enforceable.

16. No Undisclosed Claims

Each of the Parties to this Modified Settlement Agreement warrants and represents that he and it knows of no actual, potential or threatened claims or causes of action, whether presently existing or potentially arising in the future, against any of the Parties of the other side, or their heirs, executors, administrators, officers, directors, shareholders, members, agents, employees, representatives, principals, attorneys, insurers, companies, affiliates, parents, subsidiaries, partners, partnerships, joint ventures, predecessors, successors, and assigns, except for the claims and causes of action that have been released hereunder.

17. Waiver, Modification, or Amendment

No provision or breach of this Modified Settlement Agreement may be waived unless in writing signed by the Party to be charged, and waiver of any one provision or breach of this Modified Settlement Agreement shall not operate as a waiver of any other provision or breach of this Modified Settlement Agreement.

This Modified Settlement Agreement may be modified or amended only by a written instrument executed by each Party.

18. Construction

California law shall govern the validity, construction, interpretation, and enforcement of this Modified Settlement Agreement.

19. Titles and Captions

The paragraph titles contained in this instrument are for convenience and reference only, and in no way define, limit, extend, or describe the scope of this Modified Settlement Agreement or the intent or agreement of the Parties with respect to any provision hereof.

20. Advice of Counsel

The Parties represent and warrant to each other that they have conferred with counsel of their own choosing in negotiations for and the preparation of this Modified Settlement Agreement, and that they have read this Modified Settlement Agreement or have had the same read to them by their counsel and that they are fully aware of its contents and legal effect.

21. Construction and Interpretation

The Parties acknowledge, warrant and represent that the parties and their counsel have each participated in the drafting of this Modified Settlement Agreement and each provision hereof, that the Modified Settlement Agreement shall be construed as a whole according to its fair meaning, and that the Modified Settlement Agreement shall not be construed or interpreted against any Party because a provision or the Modified Settlement Agreement as a whole was prepared, drafted or requested by such Party.

22. Authorization to Enter Into Modified Settlement Agreement

Each Party represents and warrants that it is fully authorized to enter into this Modified Settlement Agreement and to provide the releases set forth herein, and that no further consent or authority is needed from any other person, corporation or entity to make this Modified Settlement Agreement fully effective and binding.

23. Signatures

This instrument may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute a single agreement. Each Party may rely upon the signature of any other Party of received in facsimile or "pdf" form by fax, e-mail, or other magnetic or electronic transmission, provided the recipient has no knowledge or reason to believe the signature is not authentic or its delivery has not been properly authorized. Upon request by a recipient, the delivering Party shall provide an original signature in confirmation of the facsimile previously delivered.

IN WITNESS WHEREOF, the Parties have executed this Modified  
Settlement Agreement as of the date set forth above.

GW SERVICES, LLC dba  
GLACIER WATER SERVICES

By: \_\_\_\_\_

Its: \_\_\_\_\_

F K B INCORPORATED dba  
MOUNTAIN'S PEAK WATER

By: \_\_\_\_\_

Its: \_\_\_\_\_

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IN WITNESS WHEREOF, the Parties have executed this Modified  
Settlement Agreement as of the date set forth above.

GW SERVICES, LLC dba  
GLACIER WATER SERVICES

By: Brian McInnis

Its: CEO

F K B INCORPORATED dba  
MOUNTAIN'S PEAK WATER

By: \_\_\_\_\_

Its: \_\_\_\_\_

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IN WITNESS WHEREOF, the Parties have executed this Modified  
Settlement Agreement as of the date set forth above.

GW SERVICES, LLC dba  
GLACIER WATER SERVICES

By: \_\_\_\_\_

Its: \_\_\_\_\_

F K B INCORPORATED dba  
MOUNTAIN'S PEAK WATER

By: Forest Balmer

Its: CEO

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# **EXHIBIT "A"**

1241642014

**SETTLEMENT AGREEMENT**  
**AND MUTUAL GENERAL RELEASE**

This Settlement Agreement and Mutual General Release (the "Settlement Agreement") is entered into as of April 10, 2013 by and between GW Services, LLC dba Glacier Water Services ("Glacier Water" or "Plaintiff"), on the one hand, and FKB Incorporated, dba Mountain's Peak Water ("Mountain Peak"), Victor Merchant ("Merchant"), and George Goldman ("Goldman") (collectively "Defendants"), on the other hand. (Plaintiff, Mountain Peak, Merchant and Goldman are sometimes each referred to individually as a "Party" and collectively as the "Parties").

**RECITALS**

A. Plaintiff is a corporation, duly organized and existing under the laws of the State of California, with its principal place of business located at Vista, California.

B. Mountain Peak is a dba of FKB Incorporated, a corporation, organized under the laws of the State of California, with its principal place of business in Valencia, California.

C. Merchant is an individual locator who works as an independent contractor, sometimes on behalf of Mountain Peak, and who previously worked for Aqua Fill.

D. Goldman is an individual locator who works as an independent contractor, sometimes on behalf of Mountain Peak.

E. On or about November 20, 2012, Plaintiff instituted an action against Defendants in the Superior Court of the State of California, County of Los Angeles, Central District, entitled *GW Services, LLC dba Glacier Water Services v. Mountain's Peak Water, et al.*, Case No. BC496020 for Intentional Interference with Contractual Relations; Intentional Interference with Prospective Economic Advantage; and for Unfair Competition

F. On or about March 4, 2013, Defendant Goldman was defaulted.

G. On or about March 4, 2013, Defendant Merchant was defaulted.

H. Plaintiff and Mountain Peak entered into various stipulations to continue Mountain Peak's answer and cross-claim date, and Mountain Peak provided to Plaintiff an unfiled cross-complaint against Plaintiff for Intentional Interference with Contractual Relations;

Intentional Interference with Prospective Economic Advantage and various other alleged economic tort claims (the "Cross-Complaint").

I. Together, the Complaint and Cross-Complaint shall be referred to as "the Action."

J. The Action relates to a dispute regarding the placement and maintenance of certain water dispensing machines located in various store/market locations (many of which used to be owned by Aqua Fill, and that were serviced by Merchant, but that were later sold to Glacier Water). Plaintiff alleged that Merchant and Goldman, who subsequent to the Aqua Fill sale, acting as independent contractors for Mountain Peak, were using their knowledge about old Aqua Fill contracts to steal those accounts away from Glacier Water and place them into Mountain Peak. Glacier Water further alleged a pattern and practice on the part of each of the Defendants to interfere with active Glacier Water contracts and sabotage Glacier Water Machines for Mountain Peak's benefit. Mountain Peak denied all such allegations and counterclaimed that Glacier Water interfered with its own contracts, strong-armed store owners to renew their contracts at Mountain Peak's expense and engaged in a pattern and practice of sabotaging Mountain Peak's machines.

F. Without any admission of fault or wrongdoing by any person or entity, to avoid further litigation expense and inconvenience, and to obtain repose with respect to the pending claims and any future claims regarding, among other things, the allegations in the Action, the Parties have agreed to settle their disputes and to enter into this Settlement Agreement on the following terms.

### AGREEMENT

NOW THEREFORE, in consideration of the mutual promises, covenants, representations and warranties contained herein and for other valuable consideration, the adequacy and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Incorporation of Recitals

The foregoing recitals are an integral part of this Agreement and are incorporated herein by this reference as if set forth in full.

2. Payment

In exchange for, and in addition to, the promises and representations made herein, Mountain Peak shall pay eleven thousand dollars and no cents (\$11,000.00) to GW Services, LLC by check, sent by certified mail, to be delivered to GW Services, LLC within five days of the full execution of this Agreement.

3. No Admission of Liability

This Settlement Agreement is a compromise of disputed claims. Nothing in this Settlement Agreement is intended to be, nor shall be viewed or construed as, an admission of liability by the Parties as to the allegations in the Complaint, the unfiled Cross-Complaint or otherwise. Further, nothing in this Settlement Agreement shall be deemed an admission of any fact, claim, or wrongdoing by or on behalf of any person or entity.

4. Dismissal of the Action and Release of Defaults

- (a) Within five Court days after the complete execution of this Agreement by all Parties, Plaintiff shall file a dismissal of the Complaint without prejudice.
- (b) Plaintiff agrees to timely release the defaults against Merchant and Goldman.
- (c) Mountain Peak, and each of the other Parties agrees that he or it shall relinquish his or its right to file the Cross-Complaint, or any responsive pleading.

5. Settlement Terms

- (a) Application. The terms of this provision shall apply to all locations owned by Mountain Peak and Glacier Water. Notwithstanding the foregoing, the Parties agree that, in order to resolve multiple disputed claims regarding the rightful contractual status of certain specific locations, the contractual status of those locations shall be resolved as follows :

Super Farms Market – to be administered by Glacier Water  
Los Compadres Meat Market – to be administered by Mountain Peak  
Mead Valley Market - to be administered by Mountain Peak  
El Ranchito Market - to be administered by Glacier Water  
Danny's Liquor - to be administered by Glacier Water  
Mercado Numero Uno - to be administered by Glacier Water  
Fontana Market - to be administered by Glacier Water (inclusive of the contract signed 1/30/2013 by Fontana Market)  
Jim's Liquor - to be administered by Mountain Peak  
J.R. Market – to be administered by Mountain Peak  
Breed's Market - to be administered by Mountain Peak  
Midway Market, Jr. - to be administered by Mountain Peak  
Guadalajara Market - to be administered by Mountain Peak  
Bob's Market - to be administered by Glacier Water  
P&J Deli Market - to be administered by Mountain Peak  
El Toro Ranch Market - to be administered by Mountain Peak

H&H Liquor - to be administered by Mountain Peak  
RPG/Union 76 - to be administered by Mountain Peak  
Mexicana Meat Market (Azusa) - to be administered by Glacier Water  
Montclair Farmer's Market - to be administered by Glacier Water

(b) Intent to Bind Locators or Other Third Parties. Mountain Peak acknowledges, for purposes of this settlement only, that while it does not legally control the actions of its independent contractor "locators," such as Goldman or Merchant, that it will instruct such locators, third parties or direct associates, whether or not they are party to this Agreement, to abide by the terms of this Agreement and will take responsibility therefore.

Glacier Water acknowledges, for purposes of this settlement only, that it will instruct its associates, whether or not they are party to this Agreement, to abide by the terms of this Agreement and will take responsibility therefore.

(c) Communications Regarding Change In Vendors or Change Of Owners. The Parties agree that if a location is going to change vendors, whether or not such change is occasioned by a change of ownership of the location or normal expiration of contract term, that notice of such change should be provided by certified mail to the other side at least 10 days before the proposed change, and such notice should be accompanied by a signed writing from the new owner confirming the change of ownership (with evidence of ownership change if possible) and/or desire to change vendors. This provision is specifically intended to avoid disputes as to, without limitation, the ownership change or the right of the owner to change vendors (i.e., the lapse of the contract). By way of example only, if Glacier Water notifies Mountain Peak of a change of vendor due to a change of ownership of a particular location, then Mountain Peak shall have ten days before the actual change, as determined by the alleged new contract date, to contact Glacier Water to challenge the change because it alleges that the store's notice was late or for any other reason.

(d) Removal of Equipment. Subject to the provisions in 5(c), the Parties agree that to the extent that there is a change of ownership and/or a related change in vendors, that the party acquiring the location shall provide notice to the other side such that the other side can timely arrange for the removal of its equipment from the premises. The Parties agree that, if the notice is not disputed, it will remove its equipment within 10 business days or at such time as the contract legally expires if later. The Parties further agree that unless there is a specific written request from the owner, the Parties shall not remove any utilities connecting their machines to the location. In the event a store owner does request removal of utilities that fact shall be promptly communicated to the other Party as per part (c) directly above.

(e) Agreement Not To Tamper With Equipment. The Parties agree that they will not

physically harm the other parties' equipment, will not unplug/disconnect the machines or tamper with them in any way.

(f) Dispute Resolution Protocol. Upon receipt of a notice of change of ownership or vendor that is disputed by either Glacier Water or Mountain Peak, either party may initiate a dispute resolution procedure as follows:

- (i) The parties shall have ten days to informally work out a resolution. If they cannot do so, the following shall occur:
- (ii) The parties within ten days shall agree on a single impartial arbitrator to hear disputes.
- (iii) The parties shall promptly (within five days) submit a one-page summary of the complaint and a one- page response to such complaint, along with any supporting documentation; copies of same shall timely be provided to the opposing party;
- (iv) The arbitrator shall promptly decide the dispute on the papers, without attorneys and without a hearing;
- (v) The arbitrator may contact a party designee via any medium (letter, phone, email, etc.) to answer any questions she/he may have;
- (vi) The arbitrator's decision shall be final and non-appealable.
- (vii) The losing party pays the arbitrator's fees, which fees shall be capped at \$500 per dispute; each side to otherwise bear all costs and attorneys' fees.
- (viii) In order to avoid any abuse of such dispute resolution process, if any party files any dispute that the arbitrator deems to be frivolous or that the arbitrator deems was filed simply to create cost/expense/delay for the other side, the other party may, at its discretion, thereafter opt out of the dispute resolution process.
- (ix) Upon final ruling by the arbitrator, the losing party has ten business days to remove its equipment from the previously disputed location.

6. Notices and Delivery

Any notice or communication required or permitted to be given by any of the Parties pursuant to this Settlement Agreement shall be sent by email, hand-delivery, registered or certified mail or by overnight delivery service to the addresses specified below. Any notice sent in accordance with this paragraph shall be deemed received on the day of delivery if hand delivered or emailed, one business day after deposit if sent via an overnight delivery service, and two business days after deposit if registered/certified mailed.

If to Glacier Water:

Glacier Water Services, Inc.  
Attn: CFO  
1385 Park Center Drive  
Vista, CA 92081-8338

If to Mountain Peak:

Mountain's Peak Water  
Forrest Balmain  
23890 Copper Hill Drive, No. 127  
Valencia, CA 91354

7. Mutual Release of Claims

(a) Except with respect to the obligations, representations and warranties set forth in this Settlement Agreement, Plaintiff, on its own behalf and (as applicable) on behalf of each of its heirs, executors, administrators, officers, directors, shareholders, members, agents, employees, representatives, principals, attorneys, insurers, companies, affiliates, parents, subsidiaries, partners, partnerships, joint ventures, predecessors, successors, and assigns and all persons and entities acting or claiming by, through, under or in concert with him or any of them (collectively, with Plaintiff, the "Plaintiff Releasees"), hereby irrevocably releases and forever discharges each of the Defendants and (as applicable) each of the Defendants' heirs, executors, administrators, officers, directors, shareholders, members, agents, employees, representatives, principals, attorneys, insurers, companies s, affiliates, parents, subsidiaries, partners, partnerships, joint ventures, predecessors, successors, and assigns and all persons and entities acting or claiming by, through, under or in concert with him or any of them (collectively, the "Defendant Releasees"), from any and all claims, demands, liabilities, actions, causes of action, suits, proceedings, controversies, disputes, damages, remedies, debts, obligations, costs, expenses, and attorney fees, at law or in equity, of every kind, nature, character, and description,

whether known or unknown, suspected or unsuspected, anticipated or unanticipated, liquidated or unliquidated, arising from or relating to the subject matter of the Action, or which were or could have been (in the past, now or hereafter) asserted in (1) the Action, (2) the events and circumstances giving rise to the Action; and (3) any part of the Action or the prosecution or defense thereof.

(b) Except with respect to the obligations, representations and warranties set forth in this Settlement Agreement, Defendants, on their own behalf and (as applicable) on behalf of each of their heirs, executors, administrators, officers, directors, shareholders, members, agents, employees, representatives, principals, attorneys, insurers, companies, affiliates, parents, subsidiaries, partners, partnerships, joint ventures, predecessors, successors, and assigns and all persons and entities acting or claiming by, through, under or in concert with him or any of them (collectively, with Defendants, the "Defendant Releasees"), hereby irrevocably releases and forever discharges Plaintiff and (as applicable) each of Plaintiff's heirs, executors, administrators, officers, directors, shareholders, members, agents, employees, representatives, principals, attorneys, insurers, companies, affiliates, parents, subsidiaries, partners, partnerships, joint ventures, predecessors, successors, and assigns and all persons and entities acting or claiming by, through, under or in concert with him or any of them (collectively, the "Plaintiff Releasees"), from any and all claims, demands, liabilities, actions, causes of action, suits, proceedings, controversies, disputes, damages, remedies, debts, obligations, costs, expenses, and attorney fees, at law or in equity, of every kind, nature, character, and description, whether known or unknown, suspected or unsuspected, anticipated or unanticipated, liquidated or unliquidated, arising from or relating to the subject matter of the Action, or which were or could have been (in the past, now or hereafter) asserted in (1) the Action, (2) the events and circumstances giving rise to the Action; and (3) any part of the Action or the prosecution or defense thereof.

(c) The claims set forth in subparagraphs 7(a) and 7(b) above are collectively and severally referred to herein as the "Released Claims." In entering into this mutual release of claims, each party to this Settlement Agreement acknowledges and agrees that this Paragraph 7 is intended to constitute a full mutual release of claims regardless of the existence or effect of any unknown, unsuspected, or unanticipated claim or fact. Each party to this Settlement Agreement acknowledges and agrees that claims or facts in addition to or different from those which he or it now knows, believes, or suspects to exist might hereafter be discovered; nevertheless, it is his or its intention by entering into this Settlement Agreement to fully, finally, and forever release, discharge, and settle all such claims, notwithstanding the existence or possible future discovery of any such additional or different claims or facts, which will in no manner affect this Settlement Agreement or the mutual release of claims set forth in this Paragraph 7. Consistent with that intention, each party to this Settlement Agreement expressly, voluntarily, and knowingly waives, relinquishes, and abandons each and every right, protection, and benefit concerning the claims to which he or it otherwise would or might be entitled now or

at any future time under Section 1542 of the California Civil Code (and all similar provisions of law), which provides:

"CERTAIN CLAIMS NOT AFFECTED BY GENERAL RELEASE. A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

8. Representations, Warranties, and Indemnification

(a) Each Party to this Settlement Agreement represents and warrants that he or it has not previously assigned, transferred, pledged, or hypothecated any claim covered in this Settlement Agreement, and will not do so in the future, nor knows of any person or entity not a party to this Settlement Agreement having (or claiming to have) any interest in any Released Claims.

(b) The Parties each agree that he or it shall fully defend, indemnify, and hold harmless the other and (as applicable) each of his or its heirs, executors, administrators, officers, directors, shareholders, members, agents, employees, representatives, principals, attorneys, insurers, companies, affiliates, parents, subsidiaries, partners, partnerships, joint ventures, predecessors, successors, and assigns and all persons and entities acting or claiming by, through, under or in concert with him or any of them, from and against any and all claims, demands, liabilities, actions, causes of action, suits, proceedings, controversies, disputes, damages, remedies, debts, obligations, costs, expenses, and attorney fees relating to, arising out of, or resulting from the assertion by any person or entity relating to any of the claims released pursuant to this Settlement Agreement which that party assigned, transferred, pledged, or hypothecated contrary to the representations in this Agreement. It is the intention of the Parties that this indemnity not require payment by the indemnified party as a condition precedent to recovery under this indemnity.

9. No Release of any Non-Settling Party

In the event that one or more parties to the Action does not sign this Agreement, nothing in this Agreement shall be construed as a release by Plaintiff of any claims, rights or remedies to recover damages, costs, expenses or attorneys' fees from any such non-signing party.

10. Parties to Bear Their Own Costs and Attorney Fees

Plaintiff on the one hand, and the Defendants, on the other hand, shall bear all of his or its own costs and attorneys' fees incurred in connection with the Action and anything in connection with the execution of this Settlement Agreement.

11. Voluntary Agreement

The parties to this Settlement Agreement acknowledge that they have read and understand each of the provisions set forth herein, that they have had the opportunity to consult with counsel of their own choice, and that this Settlement Agreement is entered into freely, voluntarily, and without any duress or undue influence.

12. Other Documents

Each party to this Settlement Agreement agrees to promptly execute and deliver any and all other documents or instruments which are necessary or appropriate to effectuate any of the provisions of this Settlement Agreement.

13. Successors

This Settlement Agreement is binding upon and shall inure to the benefit of each of the parties, and to each of their respective successors and heirs.

14. Integration

This instrument contains the entire agreement and understanding of each of the parties with respect to its subject matter, and any and all other discussions, negotiations and representations relating to the subject matter hereof are merged into this Settlement Agreement. No other agreement or representation, whether written, oral, or implied shall be deemed to exist or bind the parties with respect to the subject matter of this Settlement Agreement.

15. Severability

In the event that a court of competent jurisdiction enters a final judgment holding invalid any material provision of this Settlement Agreement, the remainder of this Settlement Agreement shall be fully enforceable.

17. No Undisclosed Claims

Each of the parties to this Settlement Agreement warrants and represents that he and it knows of no actual, potential or threatened claims or causes of action, whether presently existing or potentially arising in the future, against any of the parties of the other side, or their heirs, executors, administrators, officers, directors, shareholders, members, agents, employees, representatives, principals, attorneys, insurers, companies, affiliates, parents, subsidiaries, partnerships, joint ventures, predecessors, successors, and assigns, except for the claims and causes of action that have been released hereunder.

18. Waiver, Modification, or Amendment

No provision or breach of this Settlement Agreement may be waived unless in writing signed by the party to be charged, and waiver of any one provision or breach of this Settlement Agreement shall not operate as a waiver of any other provision or breach of this Settlement Agreement. This Settlement Agreement may be modified or amended only by a written instrument executed by each party.

19. Construction

California law shall govern the validity, construction, interpretation, and enforcement of this Settlement Agreement.

20. Titles and Captions

The paragraph titles contained in this instrument are for convenience and reference only, and in no way define, limit, extend, or describe the scope of this Settlement Agreement or the intent or agreement of the parties with respect to any provision hereof.

21. Advice of Counsel

The Parties represent and warrant to each other that they have conferred with counsel of their own choosing in negotiations for and the preparation of this Settlement Agreement, and that they have read this Settlement Agreement or have had the same read to them by their counsel, and that they are fully aware of its contents and legal effect.

22. Construction and Interpretation

The Parties acknowledge, warrant and represent that the Parties and their counsel have each participated in the drafting of this Settlement Agreement and each provision hereof, that the

Settlement Agreement shall be construed as a whole according to its fair meaning, and that the Settlement Agreement shall not be construed or interpreted against any Party because a provision or the Settlement Agreement as a whole was prepared, drafted or requested by such Party.

23. Confidentiality

The terms of this Settlement Agreement are confidential as between the Parties, and each Party agrees that it will not disclose or communicate the terms of this Settlement Agreement except to its professional advisors, or otherwise as required by law or for other legal, regulatory or accounting purposes.

24. Authorization to Enter into Settlement Agreement

Each Party represents and warrants that it is fully authorized to enter into this Settlement Agreement and to provide the releases set forth herein, and that no further consent or authority is needed from any other person, corporation or entity to make this Settlement Agreement fully effective and binding.

25. Signatures

This instrument may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute a single agreement. Each party may rely upon the signature of any other party if received in facsimile or "pdf" form by fax, e-mail, or other magnetic or electronic transmission, provided the recipient has no knowledge or reason to believe the signature is not authentic or its delivery has not be properly authorized. Upon request by a recipient, the delivering party shall provide an original signature in confirmation of the facsimile previously delivered.

IN WITNESS WHEREOF, the parties have executed this Settlement Agreement as of the date set forth above.

GW SERVICES, LLC dba  
GLACIER WATER SERVICES

FKB INCORPORATED dba  
MOUNTAIN'S PEAK WATER

By: Brian McLean  
Its: CEO

By: Forrest Balow 4/11/13  
Its: PRESIDENT

George Goldman  
George Goldman

Victor Merchant  
Victor Merchant

12/16/2014



ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): <b>David F. Berry (SBN 112743)</b>		FOR COURT USE ONLY
<b>NAGLER &amp; ASSOCIATES</b> 2300 S. Sepulveda Blvd., Los Angeles, CA 90064-1911 TELEPHONE NO.: 310/ 473-1200 FAX NO. (Optional): 310/ 473-7144 E-MAIL ADDRESS (Optional): <a href="mailto:dberry@nagler.com">dberry@nagler.com</a>		
ATTORNEY FOR (Name): <b>Defendant and Cross-Complainant GW Services, LLC</b>		
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES</b> STREET ADDRESS: 111 N. Hill Street MAILING ADDRESS: 111 N. Hill Street CITY AND ZIP CODE: Los Angeles, CA 90012 BRANCH NAME: Central - Stanley Mosk Courthouse		
PETITIONER/PLAINTIFF: F K B Inc. dba Mountain's Peak Water RESPONDENT/DEFENDANT: GW Services, LLC dba Glacier Water Service		
<b>ORDER APPOINTING REFEREE</b>		CASE NUMBER: <b>BC 531805</b>

**THE COURT FINDS:**

1.  **Section 638 appointment.** A referee is properly appointed under Code of Civil Procedure section 638 because (check one):
  - a.  all parties to the action have agreed to the appointment of a referee under section 638.
  - b.  the parties entered into a written contract or lease that provides that any controversy arising therefrom shall be heard by a referee.
2.  **Section 639 appointment.** A referee is properly appointed under Code of Civil Procedure section 639 because (check and complete a or b):
  - a.  **Discovery reference.** It is necessary for the court to appoint a referee to hear and determine any and all discovery motions and disputes relevant to discovery in the action and to report findings and make a recommendation. (Code Civ. Proc., § 639(a)(5). State the exceptional circumstances specific to the particular case that require the discovery reference, below or in Attachment 2a.)
  - b.  **Other reference.** (Check one or more of the following statutory grounds and state the reason for the appointment below or in Attachment 2b.)
    - (1)  The trial of an issue of fact requires the examination of a long account. (Code Civ. Proc., § 639(a)(1).)
    - (2)  The taking of an account is necessary for the information of the court before judgment, or for carrying a judgment or order into effect. (Code Civ. Proc., § 639(a)(2).)
    - (3)  A question of fact, other than on the pleadings, has arisen by motion or otherwise. (Code Civ. Proc., § 639(a)(3).)
    - (4)  It is necessary for the information of the court in a special proceeding. (Code Civ. Proc., § 639(a)(4).)
  - c. **Economic inability to pay.** (Check one.)
    - (1)  No party has established an economic inability to pay a pro rata share of the referee's fees.
    - (2)  One or more parties has established an economic inability to pay a pro rata share of the referee's fees and another party has agreed voluntarily to pay that additional share of the referee's fees. (Complete item 5c(3)(b).)
      - (a) The following party has established an economic inability to pay a pro rata share of the referee's fee (name each):
      - (b) The following party has agreed voluntarily to pay an additional share of the referee's fee (name each):
    - (3)  The referee is being appointed at no cost to the parties.

PETITIONER/PLAINTIFF: F K B Inc. dba Mountain's Peak Water	CASE NUMBER:
RESPONDENT/DEFENDANT: GW Services, LLC dba Glacier Water Service	BC 531805

**THE COURT ORDERS:**

3. **Referee.** The following person is appointed as referee. (The referee's signature indicating consent to serve and certification that he or she is aware of and will comply with the applicable provisions of canon 6 of the Code of Judicial Ethics and the California Rules of Court must be included in the proposed order appointing a referee under Code of Civil Procedure section 638 or attached to the order appointing a referee under section 639. See item 9.)

a. Name: Hon. Richard C. Neal  
b. Business address: JAMS, 28854 Bison Ct., Malibu, CA 90265  
c. Telephone number: (310) 457-5041

d.  The referee is a member of the State Bar of California. (Rules 3.903 and 3.923 of the California Rules of Court provide that a referee who is a former judicial officer must be an active or inactive member of the State Bar.)

(1)  The referee's State Bar number is: 57882

(2)  The referee's State Bar membership status is (check one):

(a)  Active  
(b)  Inactive  
(c)  Other (specify):

4. **Scope and subject matter of reference.** The referee is appointed as follows (check and complete a or b):

a.  **Section 638 appointment.** The referee is appointed under Code of Civil Procedure section 638 (check and complete one):

(1)  to hear and determine any or all of the issues in the action or proceeding, whether of fact or of law, and to report a statement of decision.  
(2)  to ascertain the following facts necessary to enable the court to determine the action or proceeding (state facts to be ascertained by referee below or in Attachment 4a):

b.  **Section 639 appointment.**

(1)  The following subject matter or matters are included in the reference (describe the matter or matters the referee is ordered to consider below or in Attachment 4b):

(2)  **Section 639 discovery reference.**

(a)  The discovery referee is appointed for (check one):  
(i)  The discovery matters identified in (1) above.  
(ii)  All discovery purposes in the action.

(b) The referee is authorized to set the date, time, and place for all hearings determined by the referee to be necessary; direct the issuance of subpoenas; preside over hearings; take evidence; and rule on objections, motions, and other requests made during the course of the hearing.

5. **Referee's compensation.** (Check and complete one of the following.)

a.  **Uncompensated referee.** The referee will not be privately compensated by the parties.

b.  **Compensation of section 638 referee.**

(1)  The referee's fees will be paid as agreed by the parties.

(2)  The parties have not agreed on the payment of the referee's fees and have requested that the matter be resolved by the court. The court orders that the referee's fees be paid as follows (state the manner of payment determined by the court to be fair and reasonable below or in Attachment 5b):

PETITIONER/PLAINTIFF: F K B Inc. dba Mountain's Peak Water	CASE NUMBER:
RESPONDENT/DEFENDANT: GW Services, LLC dba Glacier Water Service	BC 531805

5. c.  Compensation of section 639 referee.

(1) The maximum hourly rate that the referee may charge is (specify):

(2)  The maximum number of hours for which the referee may charge is (at the request of any party, state the maximum number of hours for which referee may charge):

(3)  The court orders that the referee's fees be paid or apportioned as follows and reserves jurisdiction to modify this order (state fair and reasonable apportionment of referee costs below or in Attachment 5c):

(a)  All parties shall pay equal shares of the referee's fees.

(b)  The parties shall pay equal shares of the referee's fees except that, based on the finding of economic inability set forth in item 2c(2):

(i) The following party is not required to pay any portion of the referee's fees (name of each party excused from paying referee's fees):

(ii) The following party shall pay the pro rata share of the referee's of the party identified in (i), in addition to his or her own share of the referee's fees (name of each party who has agreed to pay an additional share of the referee's fees):

(c)  The referee's fees shall be paid as set forth in Attachment 5c.

(4)  The court will subsequently determine how the referee's fees will be paid, under Code of Civil Procedure section 645.1(b). (If the issue of economic hardship is raised before the services of a referee appointed under section 639 begin, the court must make a fair and reasonable apportionment of referee costs.)

## 6. Use of court facilities and court personnel. Court facilities and court personnel (check and complete one):

a.  may not be used without an order of the presiding judge. (Court facilities and personnel may be used in proceedings before a privately compensated section 638 referee only upon a finding of the presiding judge that the use would further the interest of justice.)

b.  may be used as follows (describe any authorized use of court facilities or court personnel if referee will not be privately compensated or is appointed under section 639):

7.  The reference will be conducted in a private facility. The clerk must post notice that the following person may be contacted to arrange attendance at any proceeding that is open to the public (complete all of the following):

a. Name: Jose Maria D. Patino, Jr.

b. Address: JAMS, 1601 Cloverfield Blvd., Suite 370-S, Santa Monica, CA 90404

c. Telephone: (310) 309-6205

## 8. Referee's report.

a. Time of report. The referee must report (check and complete one):

(1)  in writing to the court within 20 days after the hearing, if any, has been concluded and the matter submitted.

(2)  as follows (specify other time and manner of reporting directed by the court):

b. Manner and contents of report.

(1)  Section 638 referees. The referee must report in the following manner agreed to by the parties and approved by the court (describe): With findings of fact and describing reasons for decision.

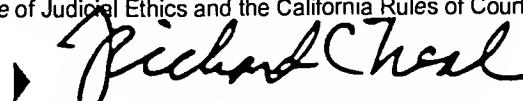
(2)  Section 639 referees. The referee must file with the court a report that includes a recommendation on the merits of any disputed issue, a statement of the hours spent and the total fees charged by the referee, and the referee's recommended allocation of payment. The referee must serve the report on all parties.

## 9. Certification of referee. The undersigned consents to serve as referee as provided above and certifies that he or she is aware of and will comply with the applicable provisions of canon 6 of the Code of Judicial Ethics and the California Rules of Court.

Hon. Richard C. Neal

(TYPE OR PRINT NAME OF PROPOSED REFEREE)

(SIGNATURE OF PROPOSED REFEREE)



GREGORY W. ALARCON

JUDICIAL OFFICER

Date: AUG 27 2014



## PROOF OF SERVICE

2 STATE OF CALIFORNIA )  
3 COUNTY OF LOS ANGELES ) ss. )

4 I, the undersigned, declare that I am, and was at the time of service of the papers herein  
5 referred to, over the age of 18 years and not a party to the within action or proceedings. My  
business address is 2300 South Sepulveda Boulevard, Los Angeles, California, 90064, which is  
located in the county in which the within-mentioned facsimile occurred.

On December 15, 2014, I served the foregoing document(s): **NOTICE OF JOINT  
MOTION FOR ENTRY OF JUDGMENT PURSUANT TO TERMS OF STIPULATION  
FOR SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES;  
DECLARATION OF DAVID F. BERRY** on:

10                   Edward A. Rose, Jr., Esq.  
11                   Two Arena Place  
                     7324 Southwest Freeway, Suite 608  
                     Houston, Texas 77074

*Attorneys for Plaintiff and Cross-Defendant  
FKB Incorporated, a California  
corporation dba Mountain's Peak Water*

*Attorneys for Plaintiff and Cross-Defendant  
FKB Incorporated, a California  
corporation dba Mountain's Peak Water*

17 (X) **BY MAIL:** I placed a true copy thereof enclosed in sealed envelope(s) addressed to the  
18 individual listed above. I deposited such envelope in the mail at Los Angeles, California.  
19 The envelope was mailed with postage thereon fully prepaid. I am "readily familiar" with  
20 the firm's practice of collection and processing correspondence for mailing. Under that  
practice it would be deposited with the U.S. Postal Service on that same day with postage  
thereon fully prepaid in the ordinary course of business. I am aware that on motion of the  
party served, service is presumed invalid if postal cancellation date or postage meter date is  
more than one day after date of deposition for mailing in affidavit.

21 I declare under penalty of perjury under the laws of the State of California that the  
22 foregoing is true and correct.

23 Executed on December 15, 2014, at Los Angeles, California.

Jacqueline Neal